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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 522

THE UNITED STATES DISTRICT FOR THE WESTERN DISTRICT OF OKLAHOMA AND THE HONORABLE STEPHEN S. CHANDLER, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, *Petitioners*,

v.

OTTO G. LUTES, FLORENCE LUTES, B. B. FRENCH, JEWELL FRENCH, L. O. HOOD, MYRTLE HOOD, D. M. BROWER, MILDRED BROWER, CARL R. STALCUP, MILLIE L. STALCUP, IDA F. WRAY, E. F. BRUCE, GERALDINE BRUCE, J. J. FRENCH, THESIA FRENCH, RIFFE WESLEY, HAZEL RIFFE, OSTBY S. AUSTIN, ETHEL AUSTIN, JESSIE E. BROWN, D. L. HAMILTON, HELEN HAMILTON, HARRY G. RIFFE, MYRTLE RIFFE, G. F. PRICE, FLORA LEE PRICE, LEWIS B. CARPENTER, MARY E. CARPENTER, E. L. CARPENTER AND BLANCHE M. CARPENTER, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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STATUTE:

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported. It is printed herein, Appendix A, page 1a. The stay order of the District Court of Oklahoma for the Western District of Oklahoma is also unreported, and is printed at Appendix B, page 9a. The journal

entry of judgment by the Oklahoma District Court for Texas County in Westhoma v. Rist, is printed at page 13a of the appendix. Its journal entry of judgment in Peerless Oil Co. v. Carpenter is printed at page 16a in the appendix. The opinion of the Court of Appeals for the Tenth Circuit, denying a motion to modify its earlier opinion, is found at page 21a of the appendix.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was filed on August 2, 1962.

Jurisdiction of this court is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

Whether a Federal district judge abuses his discretion by invoking the abstention doctrine to stay proceedings in a diversity action involving private litigants and local real property rights where: (a) the identical controlling substantive issues, involving unsettled state law, are pending in the supreme court of the forum state, and (b) the definitive resolution of the law can be anticipated within a reasonable time.[1]

STATUTES INVOLVED

There are no statutes, either Federal or State, which are pertinent to the substantive issue of this case.

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[1] At the time the Federal District Judge exercised his discretion, there were pending in the District Court of Texas County, Oklahoma, four cases, two of which had been argued and were *sub judice*. On the date the present petition was filed, the Oklahoma Supreme Court had docketed two of the state court decisions in question. The other two had by stipulation been stayed pending the outcome of appellate litigation.

STATEMENT OF THE CASE

Nineteen suits were consolidated in the United States District Court for the Western District of Oklahoma; the first having been filed August 30, 1961. All suits were brought by lessors against lessees, the latter holding under a leasehold instrument covering Oklahoma realty and the plaintiffs seeking a judicial determination that interests of lessees thereunder to certain oil property lying below sea level had expired by the express terms of the lease. The judicial basis of the suits was diversity of citizenship. The precise constructional question in each case was the proper interpretation of a "Pugh" clause (App. E) contained in the leases, in light of a consolidation and unitization of certain properties covered by the lease. All of the cases involved leases and factual circumstances substantially identical to those in *Rogers* v. *Westhoma*, 291 F. 2d 726 (10th Cir. 1961) involving Kansas land and law, in which the Court of Appeals had earlier held in favor of the lessors.

Shortly thereafter, Westhoma Oil Corporation, one of the defendants in the instant cases, filed two quiet title actions in the Oklahoma District Court for Texas County. Westhoma there sought a determination that, as to other lands and parties, the same kind of lease form as involved in the Federal District Court cases had not expired as to premises located below sea level. (See Appendix E for a summary and history of pending state court actions). On September 25, 1961, Westhoma filed a motion in the Federal District Court requesting a stay of proceedings therein until the state court had decided the dispositive issues. The motion was denied October 18, 1961.

Later, Westhoma filed two more actions in the same state court (See Appendix E), both involving the same constructional issue as in the Federal court case, and one involving the same land, the same lease, and the same parties as in the Federal action.

On motion, the District Judge for the Western District of Oklahoma granted a stay order in the nineteen consolidated cases on March 28, 1962. From this order certain plaintiffs filed a petition for a writ of mandamus in the Court of Appeals for the 10th Circuit on May 16, 1962, asking it to vacate the stay order. On June 13, 1962, the Oklahoma District Court for Texas County decided the first two state actions described above in favor of Westhoma.[2] (App. C, Attachs. 1 and 2 and App. E).

On August 2, 1962, the Court of Appeals for the 10th Circuit issued a mandamus, vacating the stay order and requiring the District Judge below to hear and decide the pending litigation. (App. A). The Court of Appeals has stayed the issuance of its mandate until October 15, conditioned on filing of a petition for certiorari, which will operate to continue such stay pending final disposition by this Court.

On August 30, 1962, Westhoma filed a motion requesting the Court of Appeals to modify one paragraph of its opinion. (App. C). The motion asserted, among

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[2] The second pair of state court actions are not yet tried. By a stipulation between opposing counsel, it is agreed that these cases shall await the outcome of the other state and Federal litigation. If the Federal action involving the same parties, same lease, and same land as one of the untried state actions is finally decided by an unappealable judgment *before* the first two state court cases are finally decided by a state court of last resort, the prior Federal decision, according to the stipulation, is to be controlling.

other things, that the "sole issue" in the outstanding state court cases was the "precise question of law which was decided in *Rogers* v. *Westhoma* and is decisively involved in the Federal court cases pending below." To the motion were attached copies of journal entries of judgment in the two decided state court cases, *Westhoma Oil Co.* v. *B. C. Rist,* No. 10,596, and *Peerless Oil & Gas Co.* v. *Carpenter,* No. 10,597 (App. C). The Court of Appeals denied this motion in a per curiam opinion filed on September 11, 1962.

REASONS FOR GRANTING THE WRIT

1. The Court of Appeals for the Tenth Circuit, in vacating the stay order below, did not act in harmony with applicable decisions of this Court. The instant case raises questions of intrinsic significance concerning the proper application of the abstention doctrine. The opinion below involved serious misconceptions of previous judicial teachings on this point. See, *e.g.*, *Alabama Public Service Comm.* v. *Southern Ry.*, 341 U.S. 341, 350-351 (1951); *Texas R.R. Comm.* v. *Pullman Co.*, 312 U.S. 496, 500-501 (1941).

2. The decision of the Court of Appeals for the Tenth Circuit is at odds with the express pronouncements of the Supreme Court in *Thompson* v. *Magnolia Petroleum Co.*, 309 U.S. 478 (1940), and *Louisiana Power & Light Co.* v. *City of Thibodaux*, 360 U.S. 25 (1959).

3. The Court of Appeals for the Tenth Circuit failed to address itself to the precise issues before it on review, *i.e.*, the soundness of the equitable discretion exercised by the trial court.

4. There is a conflict in principle between the Tenth Circuit's review of a trial court's use of the abstention

doctrine and that followed in other circuits. On this point, the differences in tone and policy are especially marked in *Mottolese* v. *Kaufman*, 176 F. 2d 301 (2d Cir. 1949), and *Beiersdorf & Co.* v. *McGohey*, 187 F. 2d 14 (2d Cir. 1951).

5. The Court of Appeals for the Tenth Circuit ignored the strong Federal policy favoring uniformity of decision in diversity cases and the avoidance of intrusion by the Federal judiciary into matters within the special competence of the states.

6. In vacating the stay order and requiring immediate adjudication on the merits by the federal district court, the Court of Appeals for the 10th Circuit lost sight of the doctrine of *Brillhart* v. *Excess Ins. Co. of America*, 316 U.S. 491 (1942).

SUMMARY OF ARGUMENT

The facts of the instant case, petitioner submits, amply justify the discretionary use of the abstention doctrine made by the district court below. This is true simply as a matter of precedent, the reasons for abstention here being indistinguishable from those in *Thompson* v. *Magnolia Petroleum Co.*, 309 U.S. 478 (1940). Further, the 10th Circuit failed to come to grips with the essential question of discretion that it should have reviewed. It improperly assumed that the stay order could be sustained only on the basis of some particular type of exceptional circumstance enumerated in *Meredith* v. *Winter Haven*, 320 U.S. 228 (1943). Such doctrinaire rigidity is unsound in principle, since it was an act of *discretion* under review, and unsound on the basis of precedents. See, *e.g. U.S.* v. *150.29 Acres*, 135 F. 2d 878 (7th Cir. 1943); *Findlay* v. *Odland*, 127 F. 2d 948 (6th Cir. 1942);

Prudential Ins. Co. v. *Zimmerer*, 66 F. Supp. 492 (D. Neb. 1946).

The 10th Circuit also ignored the strong Federal policy favoring uniform decisions in diversity cases, a policy ably expressed in such cases as *Klaxon Co.* v. *Stentor Co.*, 314 U.S. 487 (1941), *Phillips Petroleum Corp.* v. *Cabot Carbon Co.*, 348 U.S. 867 (1954), and *Clay* v. *Sun River Mining Co.*, 302 F. 2d 599 (10th Cir. 1962), and of particular importance in land cases, *Humble Oil Co.* v. *Sun Oil Co.*, 190 F. 2d 191 (5th Cir. 1951).

Finally, even if the 10th Circuit were fairly persuaded that the district court had abused its discretion, the remedy imposed by the 10th Circuit was inconsistent with *Brillhart* v. *Excess Ins. Co. of America*, *supra*. There, this court made it clear that, in such circumstances as present here, the district court should have been allowed a chance to articulate fully its reasons for granting the stay rather than being forced into an immediate adjudication on the merits.

ARGUMENT

Normally, a federal district court must assert its jurisdiction when this jurisdiction is lawfully invoked. However, as this Court is well aware, there is a class of cases in which a federal district court may properly decline to assert jurisdiction, or at least stay proceedings, while awaiting a definitive adjudication of controlling state law by a state tribunal. The precise limits of this class are not subject to mathematical delineation. But it is true beyond question that the "abstention doctrine," enunciated by this Court and its subordinate federal tribunals, recognizes an area of sound judicial discretion in which a court may quite properly stay its hand, and that within this

discretionary area a trial judge's decision should be affirmed.

Typically, cases falling this class as ripe for a non-assertion of jurisdiction—at least under the Supreme Court's imprimatur—are those in which a potential Constitutional question may thereby be avoided, *Texas R.R. Comm.* v. *Pullman Co.*, 312 U.S 496 (1941), or those involving a basic problem of state policy beyond the special competence of the federal judiciary, *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943) or those in which there is some significant countervailing interest in favor of absetention, *Meredith* v. *Winter Haven, supra.*

Among the several Supreme Court decisions the one most nearly dispositive of the present case is *Thompson* v. *Magnolia Petroleum Co.*, 309 U.S. 478 (1940). Accordingly, it is worth analyzing in detail.

In *Magnolia* the trustee of a railroad in reorganization under the Bankruptcy Act petitioned the district court, sitting in bankruptcy, for a determination of title to oil lying below right-of-way lands held by the railroad in question. Asserting both adverse possession and certain instruments of conveyance, the trustee contended that he had title in fee simple both to the land and underlying oil deposits. Finding the trustee in actual possession of the oil property, the court held it had summary jurisdiction to decide the title issue. As to this the Supreme Court upheld the district court. The Supreme Court also held, however, that this jurisdiction was improperly asserted to decide the title issue. The reason assigned by the Supreme Court was simply that the "[D]ecision with which the Federal court of bankruptcy is here faced calls for interpretation of instruments of conveyance in accordance with Illinois

law. Neither statutes nor decisions of Illinois have been pointed to which are clearly applicable. Unless the matter is referred to the State courts, upon subsequent decision by the Supreme Court of Illinois it may appear that rights in local property of parties to this proceeding have—by accident of Federal jurisdiction—been determined contrary to the law of the State which in such matters is supreme." *Id.* at 484.

It is petitioner's position that the principle of *Magnolia* must control the present case. It must be borne in mind that *Magnolia* involved private litigants, with no issues of delicate state policy or statutes of doubtful constitutionality looming in the background. The grounds for abstention were simple: private interests in local property might be decided by laws other than those followed within a state unless the federal court awaited determination of these laws by the state supreme court. The same grounds exist in the present case.

Indeed, *Magnolia* went beyond what petitioner now asks this Court to decide. There, the district court judge was not as assured of a state supreme court decision on point as is now the case here. Furthermore, this Court there held, in effect, that the district court had a *duty* to remit the questions to a state forum; here it is requested only to hold that issuance of a stay was within the judge's *permissible* discretion.

In arriving at its decision, the 10th Circuit evidently perceived the logical problems posed by *Magnolia*. It elided them by stating that "the Supreme Court has been reluctant to go beyond Magnolia." The first, and shortest retort to this line is to reiterate the obvious, namely, that *Magnolia as written* is enough to uphold the trial judge's stay order below, and there is no need

to "go beyond it." Beyond this, the 10th Circuit's remark is patently inaccurate. In 1959 the Supreme Court handed down *Louisiana Power & Light Co.* v. *Thibodaux, supra,* affirming a trial judge's remission of an eminent domain case to state courts and, in the view of its three articulate dissenters, going far beyond *Magnolia.* Furthermore, this analysis does not suffer from *County of Allegheny* v. *Mashuda,* 360 U.S. 185 (1959), decided on the same day as *Thibodaux,* since *Mashuda* involved no difficult question of state law.

Even if the 10th Circuit's opinion were not wrong on the basis of decisional law, it invites review and reversal because it appears to have confused the question of whether a trial judge *may* withhold jurisdiction with the question of whether he *must* withhold it.

The essence of the whole abstention doctrine is the soundness of a trial court's discretion. As this Court put it in *Burford* v. *Sun Oil Co.,* when a court declines to assert jurisdiction the question is always whether "[A]ssuming that the federal court had jurisdiction, should it, as a matter of sound equitable discretion, have declined to exercise that jurisdiction here?" *Cf. Landis* v. *North American Co.,* 299 U.S. 248 (1936). Petitioner contends that in this case the issuance of the stay order lay within the district judge's allowable area of discretion. This is not to say it would have been an abuse of discretion if he had *not* issued the stay. Yet the Circuit Court proceeded to a third conclusion—that it was an abuse of discretion to issue the stay—with no attention given to the middleground of discretionary action. In effect, the Circuit Court held that the trial court had a *duty* to hear and decide the case without issuing a stay pending state court

clarification of controlling issues (for this is the logical corollary of a holding that it was an abuse of discretion to issue the stay). Such a holding, however, in a case where (1) the controlling state law is undecided, and (2) a definitive resolution of this law is imminent is, petitioner submits, neither sound nor logically deducible from precedent.

Granted that the real issue below was the soundness of the trial court's discretion, it is obvious that the 10th Circuit gave exceedingly short shrift, or no consideration at all, to several important factors. It did not even discuss, for example, the fact that it was merely a stay order rather than a dismissal that was involved. Yet in the first instance jurisdiction is retained while in the second it is not; and the distinction is important for the reasons suggested by Justice Frankfurter in *Louisiana Power & Light Co.* v. *Thibodaux, supra* at 27 n. 2. It gave no thought to the extraordinary character of a mandamus writ. It made no mention of the multi-party character of the litigation, or the fact that real property interests were at stake. *Cf. Greenshields* v. *Warren Petroleum Corp.*, 248 F. 2d 61, 70 (10th Cir. 1957); *Clay* v. *Sun River Mining Co., supra.*

The importance of the fact of a real property interest, in light of the policy favoring uniformity in diversity cases, is well stated in *Humble Oil Co.* v. *Sun Oil Co., supra,* where the court stated:

> "This rule of decision in real cases is so strong that, where a principle of law establishing a rule of property has been settled in the state court, the same rule will be applied by a federal court rather than the rule announced in a prior federal decision."

Federal courts, of course, must defer to lower state court decisions in diversity cases. *Clay* v. *Sun River Mining Co., supra.* See also *Phillips Petroleum Corp.* v. *Cabot Co., supra,* where this court vacated a 10th Circuit decision in conflict with a subsequent decision by the Oklahoma Corporation Commission, remanding it to the Court of Appeals for reconsideration in light of the Commission ruling.

More important, the 10th Circuit did not consider the possibility that a decision on the merits below by the district court could well be an extravagantly futile act. This could result, of course, if it should render a decision on the instant lease in accordance with that of its parent circuit court of appeals in *Rogers* v. *Westhoma Oil Co., supra,* and between that decision and its appeal, the Oklahoma supreme court should render its decision in accord with the decisions by the Oklahoma district courts in *Westhoma Oil Co.* v. *B. C. Rist* and *Peerless Oil Co.* v. *Carpenter.* The result would naturally be that the same 10th Circuit that has here vacated the stay would then be compelled to remand the case for reconsideration in light of the contradictory decision in the Oklahoma supreme court, the ultimate spokesman for internal Oklahoma law. Furthermore, the 10th Circuit seems to have been preoccupied with what it regarded as the ordinary or "run of the mine" character of the litigation being pressed below. Never did it give any thought to the simple fact that the "ordinary" or "extraordinary" quality of the litigation itself has nothing to do with the suitability of the abstention doctrine. The doctrine may be appropriate whether the legal question is exotic or run-of-the-mine.

The instant case offers a suitable vehicle for further clarification of the abstention doctrine. It would appear

that the proper answer to the "question presented" above should be "No." At least in a case involving interests in land—a matter pre-eminently local in character—it seems that it should lie within a trial judge's allowable area of discretion to stay a proceeding where the controlling state law is wholly undetermined but a definitive pronouncement of this law is imminent. Even if such a principle of law were not fairly inferable from federal precedents, petitioner respectfully submits that it is a salutary rule, deserving of this Court's adoption in the present case.

Regardless of the foregoing, the remedy imposed by the 10th Circuit was obviously at odds with the principle enunciated in *Brillhart* v. *Excess Ins. Co. of America, supra.* In *Brillhart,* a case procedurally analogous to the present one, the Supreme Court held that a Court of Appeals had erred—after it had found an abuse of discretion in a trial court's dismissal of an action—in requiring the district court to proceed to a disposition on the merits rather than allowing it an opportunity for a proper exercise of discretion. There, the factors relied upon by the trial court in refusing to exert its jurisdiction, were not apparent in the record on appeal. *Id* at 494, note 1. The same is true in the instant case. The point of *Brillhart* was succinctly stated by Justice Frankfurter in these words:

> "Where a district court is presented with a claim such as was made here, it should ascertain whether the questions in controversy between the parties to the federal suit, and which are not foreclosed under the applicable substantive law, can better be settled in the proceeding pending in the state court. This may entail inquiry into the scope of the pending state court proceeding and the nature of defenses open there. The federal court may

> have to consider whether the claims of all parties . . . can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process . . ., etc." (495).

The point has obvious application here. Even if the Court of Appeals had felt that *prima facie* evidence of an abuse of discretion were present, it should certainly have remitted the cause for a proper exercise of discretion, with reasons therefor fully enunciated, rather than immediately requiring disposition on the merits. A clear marshalling of pertinent reasons for abstention is "a matter for determination, certainly in the first instance, by the district court." *Id* at 496.

CONCLUSION

For the reasons assigned above, petitioner respectfully requests that this petition for writ of certiorari be granted. More particularly, petitioner prays that the decision of the Court of Appeals below be reversed or, alternatively, that the court be directed to remand the case to the District Court for the Western District of Oklahoma for a more complete elaboration of its reasons for granting the stay order, and for reconsid-

eration in light of circumstances developing since the order was issued.[3]

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[3] Among other important circumstances which the Court of Appeals did not consider is the fact that the two state court actions were filed almost immediately after the first Federal action, and that, so far as the record discloses, some of the Federal actions were filed *after* the state cases. Moreover, the last consolidation order, involving the 19 cases here in issue, was entered in February of 1962.